In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 975

GENERAL ELECTRIC COMPANY, BATTERY PRODUCTS, CAPACITOR DEPARTMENT, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

1. In the spring of 1963, Local 2156, International Brotherhood of Electrical Workers, began an organizing drive at petitioner's newly opened plant in Jacksonville, Florida. From June 1963 to April 1964, the petitioner engaged in an anti-union campaign that included interrogation of employees about union activities, implicit threats, an atmosphere of surveillance, and a unilateral announcement of a two-stage wage increase for some employees. Notwithstanding these unfair labor practices,[1] the union, on October 30,

[1] Petitioner does not challenge the court of appeals' approval of the Board's findings on these practices and enforcement of its order dealing with them.

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1963, won a Board election, 65–62, and was certified as the bargaining representative. Negotiations with the company began on February 13, 1964, and a contract was ultimately signed on December 1, 1964, to be effective until April 3, 1965 (Pet. App. 2a–3a.) The only question presented by the petition (Pet. 2) is whether petitioner was justified in withdrawing recognition from the union at the end of the contract term, on the ground that the union no longer represented a majority of the employees.

The Board's findings on this issue (R. 63–68),[2] sustained by the court below (Pet. App. 22a–29a), were these. During contract negotiations on and after March 24, 1964, petitioner violated its duty to bargain in good faith as required by Section 8(a)(5) of the National Labor Relations Act by refusing to furnish the union with any information about area wage surveys that were the basis of petitioner's wage proposals, and by taking an inflexible position that no wage increase would be justified until April 5, 1965, when a 2½ percent or five cents per hour increase—which petitioner had announced in August 1963—was scheduled to go into effect. The Board further found (R. 70–71), with the approval of the court below (Pet. App. 30a–33a), that the loss of the union's majority was "directly attributable" (Pet. App. 31a) to this unlawful refusal to bargain, and that petitioner therefore could not rely on the loss of majority to justify its refusal to bargain with the union on and after March 31, 1965.

[2] "R." refers to the transcript of record in the court below.

2. Petitioner does not challenge the findings on its refusal to bargain, but contends only that specific evidence was required to establish a "causal connection between the unfair labor practices and the loss of union support * * *" (Pet. 6). It is well settled, however, that the Board may properly "infer * * * from the proven facts such conclusions as reasonably may be based upon the facts proven." *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U.S. 793, 800. The Board here found that petitioner unlawfully withheld essential bargaining information and refused meaningful bargaining about wages. This conduct forced the union—which had already been weakened by petitioner's pre-certification unfair labor practices—to accept, under protest,[3] a first contract on the company's terms; petitioner's intransigence also deprived the union of any real chance of getting better terms for the employees in the future. In this setting, as the court of appeals held (Pet. App. 34a–36a), the Board was amply justified in finding a causal nexus between petitioner's refusal to bargain in good faith and the union's subsequent loss of majority support.

There is nothing in *Medo Photo Supply Co.* v. *National Labor Relations Board*, 321 U.S. 678, to the contrary. Both there and in the companion case of *Franks Bros. Company* v. *National Labor Relations Board*, 321 U.S. 702, the Board had, as here, inferred

[3] The union entered into the contract on December 1, 1964, but reserved its right to press its refusal-to-bargain charges before the Board (Pet. App. 28a–29a; R. 73–74).

from the nature of the employer's unfair labor practices that the loss of the union's majority was attributable to the employer's illegal conduct.[4]

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1969.

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[4] *National Labor Relations Board* v. *Cactus Petroleum, Inc.*, 355 F. 2d 755 (C.A. 5), relied on by petitioner (Pet. 7–8), is inapposite. The Fifth Circuit there agreed that "[t]here is logic" in the Board's position that unjustified withholding of recognition causes weakening of employee support for a union, but found that the employer's refusal was legal in that case (355 F. 2d at 760).

U.S. GOVERNMENT PRINTING OFFICE: 1969